

REMARKS/ARGUMENTS

The present communication is responsive to the Office Action mailed May 29, 2008. Applicants submit a Two-month extension of time herewith, extending the period of reply from August 29, 2008 up to and including October 29, 2008. A Request for Continued Examination is also submitted herewith.

Claims 1-19 were rejected in the Action. Claims 1, 3-7, 12-15 and 19 are amended, claims 8, 11, and 16-18 are canceled, and claims 21-28 are added herein. Claim 20 was previously canceled. Therefore, claims 1-7, 9-10, 12-15, 19, and 21-28 are currently pending in the present application. Applicants respectfully submit no new matter has been added to the present application. All of the subject matter in the amended and added claims can be found in Applicants' originally filed specification.

Applicants would like to thank the Examiner for affording Applicant's undersigned attorney on October 3, 2008 the opportunity to discuss the current Action. In the Action, the Examiner rejected claims 1-19 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,113,637 to Gill et al. ("Gill") in view of PCT Appl. No. WO 01/62191 to McGahan et al. ("McGahan"). The substance of the interview included a discussion of how the intervertebral device and tool set of the present invention differed from the cited references. Specifically, Applicant's undersigned attorney discussed the structure of the manipulation tool shown in 4aa-4ll of the drawings and described in paragraphs [00139]-[00156] of the originally filed specification

With respect to amended independent claim 1, Applicants respectfully submit that the cited references neither disclose nor suggest an orthopedic device and tool set having

first and second baseplates wherein each of the baseplates have an angled perimeter, and "a manipulation tool having a distal end including a wedge-shaped extension projecting therefrom, the wedge-shaped extension located between top angled surfaces and bottom angled surfaces of the distal end" . . . "wherein the angled perimeters of the first and second baseplates are simultaneously engageable with the top and bottom angled surfaces of the manipulation tool such that the first and second baseplates are lordotically angled with respect to one another when the manipulation tool is engaged to the first and second baseplates." As argued in the interview, neither Gill nor McGahan alone or in combination teach the above referenced limitations in amended claim 1. Applicants respectfully submit claim 1 is in condition for allowance. Claims 2-7, 9, 12-17, and 21-24 are also allowable, *inter alia*, by virtue of their dependence from claim 1 an allowable base claim.

With respect to amended independent claim 19, Applicants respectfully submit that the cited references neither disclose nor suggest an orthopedic device and tool set having first and second baseplates wherein each of the baseplates have an angled perimeter, and "a manipulation tool having a distal end including two sets of angled faces separated by a wedge-shaped extension extending therefrom, the two sets of angled faces corresponding to the angled perimeters of the first and second baseplates such that when the distal end of the manipulation tool is engaged with the angled perimeter of the baseplates, movement of the baseplates relative to the distal end of the manipulation tool is limited by interference between the angled perimeter of the baseplates and the distal end of the manipulation tool in at least three separate surgical approach aspects." As argued in the interview, neither Gill nor McGahan

alone or in combination teach the above referenced limitations in amended claim 1.

By the Examiner's own admission, the manipulation tool of Gill does not include angled faces. The Examiner uses McGahan as a teaching for a manipulation tool have angled surfaces that engage angled surfaces of an implant. However, because of the structure of the manipulation tool and the implant in McGahan, the angled surfaces of the manipulation tool may only engage specific surfaces of the implant. In McGahan, because the implant is only one solid element, in order for the manipulation tool to manipulate the implant a threaded end of the manipulation tool must be threaded into threaded holes in the implant. Further, the implant of McGahan does not include a manipulation tool including a central flat surface flanked by two flat surfaces, wherein the implant is engageable for manipulation using the manipulation tool by positioning the central flat surfaces of the manipulation tool against any one of the plurality of flat surfaces of the implant. Therefore, McGahan does not teach or suggest movement of the implant relative to the distal end of the manipulation tool is limited by interference between the angled perimeter of the implant and the distal end of the manipulation tool in at least three separate surgical approach aspects as required by amended independent claim 19. Gill does not cure this deficiency. For the foregoing reasons, Applicants respectfully submit claim 19 is in condition for allowance.


In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 29, 2008

Respectfully submitted,

By 
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